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## Before the FEDERAL COMMUNICATIONS COMMISSION Washington, DC 20554

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In the Matter of

Implementation of Sections 11 and 13 of the Cable Television Consumer Protection and Competition Act of 1992

Horizontal and Vertical Ownership Limits, Cross-Ownership Limitations and Anti-Trafficking Provisions

To:

The Commission Mail Stop 1170

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

MM Docket No. 92-264

## COMMENTS OF THE COMMUNITY BROADCASTERS ASSOCIATION

- 1. The Community Broadcasters Association ("CBA") hereby submits these Comments in response to the Commission's <u>Further</u>

  Notice of <u>Proposed Rule Making</u> ("Notice") in the above-captioned proceeding, FCC 93-332, released July 23, 1993. CBA is a trade association representing the interests of licensees and permittees of low power television (LPTV) stations throughout the nation.
- 2. At an earlier stage of this proceeding, on February 8, 1993, CBA filed comments urging the Commission to implement the intent of Congress, expressed in the Cable Television Consumer Protection and Competition Act of 1992, by limiting the number of channels on a cable system devoted to programming in which the cable system owner has an interest. CBA also urged that local franchising authorities be given authority to enforce the new rules. CBA continues to adhere to its position.

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- 3. The proposed limitation is needed because of the large number of cable operators which refuse to carry LPTV stations, even when they provide local programming not available from other sources. While some cable operators recognize the value of local LPTV programming, many others are more interested in putting LPTV stations out of business to eliminate a competitor for local advertising sales. They often claim that no channel capacity is available, although capacity somehow opens up when a new programming service comes along in which the cable operator has a financial interest. 1/ Limiting the number of programming services in which the cable operator has an interest will put cable operators in a position to make more decisions based on the needs of their audiences rather than the advancement of their own programming investments. Thus the prompt adoption of rules with meaningful limits will be in the public interest.
- 4. CBA believes that the discussion of the vertical attribution standard beginning at par. 191 of the <u>Notice</u> is set to some extent in the wrong framework. The question is not whether the cable operator has the power to <u>control the content</u> of the channel but rather whether the cable operator has an

<sup>1/</sup> CBA noted that large multiple system owners ("MSO's") in particular are known for finding space, including on VHF channels, for new program roll-outs in which they have an interest, although they shake their heads sadly when an LPTV station offers local programming to their system. Recent developments where cable operators have negotiated channel capacity in return for retransmission consent (e.g., the arrangement to grant Fox Television a cable channel) illustrate the ability of cable operators to find capacity when they want to do so.

economic incentive to favor a programming service in which it has an investment over other services when deciding what services to carry. The purpose of the rule should be to establish the needs and desires of the audience as the criterion for program selection rather than the cable operator's vertically integrated economic interest. Therefore, the rule should apply whenver the cable operator has any significant economic interest in a program service, regardless of the nature of that interest. In other words, contrary to the discussion at par. 198 of the Notice, the purpose of the rule should be to deter anti-competitive conduct, so the concepts of Section 63.54 of the Rules, 2/ not the concepts behind Section 73.3555, should apply.

5. Finally, CBA believes that it is premature at this time to make a determination that when the number of channels on a cable system reaches a certain capacity, it will be appropriate to eliminate any restrictions on cable ownership of programming. It is possible that the increased capacity obtained as the result of compression technology will be used in large part for time-shifting, creating a "quasi-video-on-demand" service by delivering the same program on multiple channels at different times. Until more is known about how high capacity is utilized, and in particular whether it yields diversity or competition,

<sup>2/</sup> These concepts are described at footnote 190 of the Notice.

there is no basis for anticipating how or whether it should be regulated. Respectfully submitted, COMMUNITY BROADCASTERS ASSOCIATION

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August 23, 1993